

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

ASHLEY AMARIS OVERBEY, *et al.*,

Plaintiffs,

v.

THE MAYOR AND CITY COUNCIL
OF BALTIMORE,

Defendant.

Civil Action No. DKC-17-cv-1793

DECLARATION OF DANIEL W. WOLFF

1. My name is Daniel William Wolff. I am a partner in the law firm of Crowell & Moring LLP, 1001 Pennsylvania Avenue, NW, Washington, DC 20004. Crowell & Moring represents the Plaintiffs in the above-captioned litigation. I am a member in good standing of the District of Columbia bar and the Ohio bar. I am also admitted to practice in the U.S. District Courts for the Districts of Maryland, Colorado, the Southern and Northern Districts of Ohio, and the District of Columbia; the U.S. Courts of Appeals for the D.C. Circuit, Federal Circuit, Third Circuit, Fourth Circuit, Sixth Circuit, Seventh Circuit, and Tenth Circuit; and the Supreme Court of the United States. I make this declaration of my own personal knowledge.

2. I have been engaged in the practice of law since 2001. I am a 1992 graduate of the University of Wisconsin (Madison), and a 2001 *summa cum laude* graduate of the University of Dayton School of Law, where I served as an editor on Law Review and graduated third in my class of more than 150 students. Immediately following law school, I clerked for two years for the Honorable Walter H. Rice, who was then Chief Judge of the U.S. District Court for the Southern District of Ohio. I joined Crowell & Moring as an associate in the fall of 2003, and was elected into the partnership commencing January 2013.

3. I serve as chair of my firm's administrative law and regulatory practice. My day-to-day practice is principally litigation-focused with an emphasis on assisting clients understand their rights and responsibilities under the various statutes and regulations that apply to their operations and, where appropriate, develop strategies for challenging governmental action pursuant to administrative procedure and constitutional legal theories. I serve on the steering committee of the Administrative Law and Agency Practice Section of the Washington, D.C. Bar Association, and regularly speak or comment publicly on issues of administrative procedure and constitutional law.

4. I have handled significant litigation matters across the country for both corporate and individual clients, in both state and federal courts,

including on issues implicating the First Amendment, which is at the heart of this lawsuit. In the past year, as lead or co-counsel, I have secured litigation victories for clients in the U.S. Supreme Court (arising under the Affordable Care Act and the Appropriations Clause of the U.S. Constitution), the U.S. Court of Appeals for the Federal Circuit (arising under the Affordable Care Act), the U.S. District Court for the Northern District of California (arising under the Freedom of Information Act), and in two cases in the U.S. District Court for the District of Columbia (the first arising under the 2020 CARES Act, and the second arising under the Administrative Procedure Act and other federal statutes).

5. I also maintain a robust *pro bono publico* practice, typically billing over 100 hours per year to cases implicating important social issues, such as racial justice and the rights of the disabled. The case at bar is one such case.

6. I directly supervised the work of my colleagues on this matter.

7. Tyler O'Connor is a counsel in Crowell & Moring's Energy and Environment and Natural Resources practice groups, in which he litigates energy and environmental disputes in the federal appellate and district courts and in arbitration. Tyler graduated from Emory University with distinction in 2011 and from Emory University School of Law, where he served on the Emory Law Journal, with high honors in 2014. After law school

Tyler clerked for Judge Catharina Haynes on the United States Court of Appeals for the Fifth Circuit and subsequently joined Crowell & Moring. In addition to his active and diverse energy and environmental litigation docket—which includes recent cases in the United States Court of Appeals for the Fourth, Fifth, and Ninth Circuits, and the United States District Courts for the Districts of Maryland and the District of Columbia—Tyler has a prolific *pro bono* practice. Among other cases, he is currently representing tenants in a class action lawsuit against a Virginia housing authority, representing civil rights organizations in a lawsuit for access to judicial records in the District of Maryland, and representing an inmate in parole and related proceedings.

8. Nkechi Kanu is a counsel in Crowell & Moring's Government Contracts practice group, where she focuses on False Claims Act investigations and litigation, as well as litigation of a variety of complex claims, disputes, and recovery matters for government contractors in federal courts and in arbitration. Nkechi graduated from the University of California, Berkeley in 2011, and from Georgetown University Law Center in 2014, where she served as an editor on the American Criminal Law Review. Nkechi has worked on a variety of *pro bono* cases that enhance her litigation experience, including representing individuals in cancellation of removal proceedings in immigration court, representing an inmate in a prisoner's

right lawsuit in federal district court, and representing local media and civil rights organizations in a lawsuit for access to judicial records.

9. Brian Lewis is an associate in Crowell & Moring's Health Care and Antitrust practice groups, where he represents health care entities in complex commercial litigation and antitrust matters in arbitration and federal courts. Brian was selected by his peers this year to be included in The Best Lawyers in America "Ones to Watch" list for his work in antitrust law. He maintains an active *pro bono* practice, which includes representing criminal defendants through the Maryland Office of the Public Defender *pro bono* program. Brian received his B.A., *summa cum laude*, from Sam Houston State University, and his J.D., *cum laude*, from Georgetown University Law Center, where he served as an editor American Criminal Law Review and represented criminal defendants in D.C. Superior Court through the Criminal Justice Clinic.

10. Benjamin Wastler was an associate at Crowell & Moring and currently serves as an attorney in the Office of the Chief Counsel at United States Customs and Border Protection. During his tenure at Crowell and beforehand, at the law firm Gibson, Dunn & Crutcher LLP, Ben litigated antitrust and other disputes in the federal courts. Ben graduated from Georgetown University in 2006 and from Boston College Law School in 2010,

during which time he was Editor in Chief of the International & Comparative Law Review.

11. Charles Austin was an associate at Crowell & Moring and currently serves as an Assistant United States Attorney at United States Attorney's Office for the District of Maryland. Charles clerked for one year at the U.S. District Court for the Eastern District of Virginia, followed by one year at the U.S. Court of Appeals for the Fourth Circuit. Charles received his B.A. from Temple University in 2004 and his J.D. from the University of Maryland Francis King Carey School of Law in 2012, where he graduated Order of the Coif and the Order of the Barrister, and served as an editor on the Maryland Law Review.

12. Several of my partners also assisted in this litigation at the appellate phase. Consistent with our appellate practice for any client, whether billable or *pro bono*, and in keeping with the legal significance of this case in particular, partners Clifton S. Elgarten, Richard Lehfelddt, and Thomas A. Lorenzen served as the judicial panel for two moot arguments. Cliff is a graduate of City College of New York and earned his law degree *summa cum laude* from the Benjamin N. Cardozo School of Law. Immediately following law school, he was a law clerk for the U.S. District Court for the Eastern District of Pennsylvania, and then for U.S. Supreme Court Associate Justice William J. Brennan. Richard, who left the firm in March 2020, is a

graduate of the University of Michigan and Harvard Law School. Tom is a graduate of UCLA and Harvard Law School, and himself a distinguished appellate attorney who has briefed, argued, or supervised hundreds of appellate matters while at Crowell, a prior law firm, and over a decade spent at the U.S. Department of Justice.

13. Numerous paralegals and support staff have assisted with various stages of the litigation.

14. In 2017, ACLU of Maryland engaged Crowell & Moring as cooperating counsel to join with the ACLU in challenging the legality of the decision of the Baltimore Police Department (BPD) and the Mayor and City Council of Baltimore to withhold half of the proceeds owed to Ashley Overbey as a result of the settlement of a civil rights action she had filed against the BPD because of comments she made in a public forum about the events that precipitated her civil rights lawsuit. And because the City's treatment of Ms. Overbey reflected the broader policy of the City and the BPD to require plaintiffs settling civil rights lawsuits against BPD to refrain from saying anything more publicly about their lawsuits or the facts precipitating their lawsuits, we and ACLU were also hired by the Baltimore Brew to challenge the legality of that policy more generally.

15. On June 30, 2017, Crowell & Moring and the ACLU, as co-counsel, filed suit in this Court on behalf of Ashley Overbey and the

Baltimore Brew, challenging the legality of the so-called non-disparagement policy which the City incorporated into approximately 95% of all settlement agreements stemming from civil rights actions filed against the BPD.

16. The legal work handled by Crowell & Moring involved critical thinking and deep analysis of, among other things, the First Amendment and public policy implications of the City's non-disparagement policy. I supervised and participated in the research for this matter and the crafting of the theory of the case, the drafting of the complaint, and the drafting of our opposition papers to the City's and the BPD's motions to dismiss or for summary judgment. The case was initially dismissed by Judge Motz and the matter closed, without any argument on the motions papers, but soon after the matter was re-opened and re-assigned to Judge Garbis. *See* ECF #26; ECF #28. I participated on a conference call with Judge Garbis and then supervised the preparation of a motion for reconsideration that we filed on behalf of the Plaintiffs at Judge Garbis' request. I then supervised all work in preparation for argument, and I presented argument on behalf of Plaintiffs at the hearing held by Judge Garbis on November 16, 2017.

17. Upon dismissal of the case by Judge Garbis, I spearheaded and supervised the appellate work before the Fourth Circuit, including the drafting of the briefs and preparation of all related filings. I then presented

argument on behalf of Plaintiffs-Appellants to the Fourth Circuit on January 30, 2019.

18. Since the Fourth Circuit reversed the decision of Judge Garbis and remanded the matter to this Court, I have supervised all of the work of Crowell attorneys on remand, including the research for and preparation of Ms. Overbey's motion for summary judgment on liability and damages, and the work related to the motion for fees for which this declaration is being submitted in support.

19. Crowell & Moring is dedicated to providing high quality work to all clients, including those we represent on a *pro bono* basis. We staff our *pro bono* cases just like all other firm matters and provide the same service given to all our clients.

20. As a reflection of the significance of the Fourth Circuit's decision in this case—holding the challenged policy unenforceable on policy grounds rooted in the First Amendment—Crowell & Moring was recognized by *The Financial Times* as a finalist for their award commending “Innovation in the Rule of Law and Access to Justice”; we were also named to the *National Law Journal's* 2020 Pro Bono Hot List. Moreover, I personally have been recognized by the *National Law Journal* on its 2020 list of Political Activism & 1st Amendment Rights Trailblazers.

21. The outcome in the Fourth Circuit also had a significant impact on Baltimore City policy. In light of the Fourth Circuit's decision, the City enacted legislation prohibiting the use of its former non-disparagement policy in all future settlements of police misconduct cases and voiding the applicability of that policy as to any outstanding settlement agreements.

22. For this matter, as for all *pro bono* matters, we created two internal billing numbers, and I monitored the time we spent on these matters.

23. Attached hereto as Exhibit 1 is a Fee Chart for Crowell & Moring's work on behalf of the Plaintiffs in this matter. Exhibit 1 was generated by computer based on timesheets entered in the ordinary course of business by attorneys and staff working on the matter. I personally reviewed and approved the time billed by each timekeeper as properly attributable to work in this matter. Exhibit 1 reflects hours each Crowell & Moring timekeeper expended in this matter as well as the time charge for each according to the firm's current standard billing rates. Exhibit 1 is prepared in accordance with this Court's guidelines, and includes such additional information as the substantially lower *Laffey* Matrix rates at which we are seeking compensation for purposes of this fee petition. It also includes information about those Crowell personnel who worked on the case but for whom we are not seeking reimbursement in this petition.

24. We have submitted our fee petition based on the Court's rules and guidelines. In our exercise of billing judgment, we are making very significant cuts in the amounts for which compensation is sought, as well as in the number of personnel for whom we are billing. The firm's standard rates charged, and the lower *Laffey* rates sought, are detailed in the fee petition and in Exhibit 1.

25. Exhibit 2 also sets forth a true and correct accounting of the unreimbursed disbursements and costs incurred by Crowell & Moring in connection with this matter. All of the disbursements and costs were paid by Crowell & Moring; no surcharge has been added to any expense.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct to the best of my knowledge, information and belief.

Executed this 9th day of November, 2020 in Washington, DC.

Respectfully submitted,

/s/ Daniel W. Wolff

Daniel W. Wolff

Date: 11/9/2020